



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)	
BLUESTAR NETWORKS, INC., FOR)	
AUTHORIZATION TO PROVIDE RESOLD)	<u>ORDER OF APPROVAL</u>
AND FACILITIES-BASED, LOCAL)	
EXCHANGE, EXCHANGE ACCESS, AND)	
INTEREXCHANGE TELECOMMUNI-)	
CATIONS SERVICES THROUGHOUT)	
NEW JERSEY)	DOCKET NO. TE99060397

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated June 24, 1999, BlueStar Networks, Inc., (BlueStar or Petitioner) filed a petition with the Board of Public Utilities (Board) requesting authority to provide all forms of facilities-based and resold local exchange, exchange access and interexchange telecommunications services throughout New Jersey. By letter dated November 9, 1999, Petitioner submitted a Motion for a Protective Order, seeking confidential treatment of its financial information and its competitive exchange carrier questionnaire. Subsequently by letter dated December 21, 1999, Petitioner withdrew its request for confidentiality of the competitive exchange carrier questionnaire. BlueStar submitted responses to Staff interrogatories by letter dated July 27, 1999 and a response to a Staff questionnaire on June 24, 1999. By letter dated October 14, 1999, BlueStar filed a copy of its proposed tariff. This filing has been separately docketed (Docket No. TT99100788) and is presently pending before the Board.

According to the petition, BlueStar is incorporated under the laws of the State of Tennessee, and its principal offices are located at L&C Tower, 401 Church Street, 24th Floor, Nashville, Tennessee 37219. BlueStar is a wholly-owned subsidiary of BlueStar Properties, Inc., which operates as a holding company. Petition at 3. Petitioner submitted copies of its Tennessee Certificate of Good Standing and its New Jersey Certificate of Authority to operate as a foreign corporation. Letter dated July 27, 1999, Exhibit A and B. In addition, BlueStar advised that it is certified to provide telecommunications services in the States of Tennessee, Kentucky and Florida. BlueStar also advised that it has applications pending to provide telecommunications services in the States of Mississippi, Missouri, Louisiana, Alabama, Indiana, Illinois, Kansas, South Carolina, North Carolina, Oklahoma, Arkansas, Pennsylvania and New Mexico. Petition at 6. BlueStar advised that it has not been denied any authority to provide local exchange telecommunications services in any State. Ibid. Petitioner stated that BlueStar is currently providing services in Tennessee and Kentucky, where it offers digital subscriber lines (DSL)-based telecommunications services to allow for high-speed Internet connections and access. Letter dated July 27, 1999 at 2.

BlueStar Properties, Inc. is a Tennessee corporation, incorporated on September 28, 1998, which has two subsidiaries, BlueStar Communications, Inc., the operating business, and BlueStar Networks, Inc., which maintains the regulatory licenses. BlueStar Properties, Inc., through its two subsidiaries, is a data competitive local exchange carrier (CLEC) implementing DSL technology to provide high speed Internet access LAN extension, web hosting services, telecommuting and connect provisioning to both the business and residential market. Letter dated July 27, 1999, Exhibit C at 7. In addition, Petitioner stated that BlueStar Properties, Inc. and its subsidiaries had annual revenues of \$12,101 for the year ended December 31, 1998, and its consolidated revenues for the year ended June 30, 1999 were \$136,211. Petitioner also advised that Blue Star Properties, Inc. does not have any employees, but the consolidated corporate entity employs 45 people. Id. at 2.

In its petition, BlueStar advised that it seeks authority to provide facilities-based and resold local exchange, exchange access and interexchange telecommunications services over its own facilities, facilities leased or purchased from the incumbent local exchange carriers (ILECs), and through the resale of services of the ILECs to subscribers from all points within the State of New Jersey. Petition at 6. BlueStar advised that it seeks statewide authority because it may expand its services as market conditions warrant, and as additional service areas become open to competition. Id. at 2. According to the petition, BlueStar initially will provide Internet-protocol based telecommunications services using DSL technology, which will allow for high-speed Internet access and other high-bandwidth data transfer applications not available through current ISDN, cable modems, or T1 technology. Id. at 6. Petitioner also advised that it will not provide voice-grade telecommunications services. Id. at 7. BlueStar stated that it will provide three general options of service offerings for the residential, small and large business segments. Id. at 8. To date, BlueStar has not signed an interconnection agreement with any incumbent local exchange carrier in New Jersey. Id. at 9.

Petitioner requested a waiver of N.J.A.C. 14:1-5.11, which requires the filing of pro forma income statements for the first two years of operations. BlueStar also requested a waiver of N.J.A.C. 14:1-4.3 which requires that its books and records be maintained in accordance with the Uniform System of Accounts (USOA). Petitioner stated, for efficiency and since BlueStar's services are competitive and will not be subject to rate of return regulation, it will maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP). Id. at 4. Petitioner also requested relief from its obligations under N.J.A.C. 14:1-5.15(a) to keep its books and records outside of New Jersey, in Petitioner's corporate offices in Nashville, Tennessee. Id. at 4-5. Petitioner stated that having to maintain its books and records in the State of New Jersey would place an undue financial burden on Petitioner as it competes with other local exchange carriers in the State of New Jersey. Petitioner also stated that it will produce its books and records at such time and place as the Board may designate, and will pay any reasonable expenses for examination of the records. Id. at 5.

BlueStar asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications service in the State of New Jersey. Id. at 9. In addition, BlueStar asserted that approval of this Petition will provide significant benefits to residential and business customers in terms of carrier choice, price, increased reliability, responsiveness, and the introduction of new services. Id. at 3. BlueStar also stated that it will stimulate investment in New Jersey's telecommunications infrastructure, resulting directly in increased employment opportunities. Ibid.

BlueStar asserted that it possesses sufficient technical, financial and managerial resources and capabilities to provide local exchange, exchange access, and interexchange telecommunications service within the State of New Jersey. Id. at 2. With regard to its managerial qualifications, BlueStar stated that its officers are well qualified to execute its business plan and to operate and maintain BlueStar's facilities over which such services will be deployed. Id. at 5-6. In addition Petitioner submitted the biographies of its officers and directors which, according to BlueStar, demonstrate extensive telecommunications experience. Id. at 6, Exhibit D.

In support of its technical qualifications, BlueStar stated that it will deploy its services by adding equipment such as DSL modems, digital subscriber line access multiplexers (DSLAMs) and POTS splitters to existing copper lines purchased or leased from local exchange carrier. Id. at 7. BlueStar also stated that through this technology, DSL provides inexpensive bandwidth that will support high-speed Internet access, LAN extension, medical imaging, telecommuting, and video applications such as video-on-demand, distance learning and video conferencing. Ibid.

In support of its financial qualifications, BlueStar stated that it is financially qualified to provide its service offerings in New Jersey and has access to the capital necessary to conduct its telecommunications operations. Petition at 4. Petitioner has submitted a copy of BlueStar Properties, Inc.'s most recent consolidated financial statements, including balance sheets. Id. at 4 Exhibit C. In addition, BlueStar submitted consolidated financial statements for the year ended December 31, 1998, including balance sheet, statement of operations, stockholders equity and cash flows. Letter dated July 27, 1999, Exhibit C. As noted earlier, by letter dated November 9, 1999, BlueStar filed a motion for a protective order, including a letter memorandum and affidavit of Richard L. Burtner, Chief Financial Officer of BlueStar, in support thereof, requesting that the Board grant protective treatment of its financial information contained in the Petition at Exhibit C. Id.

By letter dated August 16, 1999, the Division of the Ratepayer Advocate (Advocate) stated that it supports the introduction of competition in the New Jersey telecommunications market because competition encourages lower prices and technological development and deployment, and provides consumers with a greater number of alternatives. The Advocate recommended that the Board approve BlueStar's petition and stated that it does not oppose the requests for waiver of Board requirements.

DISCUSSION

On February 8, 1996 the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of BlueStar's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed BlueStar's petition and the information supplied in support thereof, the Board FINDS that BlueStar has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES BlueStar to provide local and interexchange telecommunications service in New Jersey subject to approval of its tariff. The Board notes that BlueStar must file a complete tariff conforming to all the requirements of law, including all applicable Board rules and regulations. The Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, pursuant to N.J.A.C. 14:1-1.2(b)1 and N.J.A.C. 14:1-5.15(a), from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide its books and records to the Board upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of those books and records, the Board APPROVES the BlueStar's request for the exemptions from maintaining its books and records in New Jersey and under the USOA. However, the Board DENIES Petitioner's request for a waiver of N.J.A.C. 14:1-5.11(a)(5). Pro forma income statements and actual or estimated balance sheets for the first two years of operations demonstrate essential corporate planning in which every company engages as it begins to offer services to the public. The provision of these financial documents is a basic filing requirement and will not be waived. Those documents must be submitted prior to approval of BlueStar's initial tariff. Regarding BlueStar's financial information, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that the information contained in the petition of Exhibit C is sensitive financial information which merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the information contained in Exhibit C be kept under seal.

DATED: 3/29/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

ATTEST:

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
EDWARD D. BESLOW
ACTING BOARD SECRETARY

(signed)
FREDERICK F. BUTLER
COMMISSIONER